

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

(1) **PINNACLE PACKAGING COMPANY, INC.**, an Oklahoma corporation,
(2) **POLO ROAD LEASING, LLC**, an Oklahoma limited liability company, and
(3) **J. SCOTT DICKMAN**,

Plaintiffs,

v.

Case No. 12-CV-537-JED-TLW

(4) **ONE EQUITY PARTNERS LLC**, a Delaware limited liability company,
(5) **ONE EQUITY PARTNERS (EUROPE) GmbH**, and (6) **CONSTANTIA FLEXIBLES GmbH**,
an Austrian corporation,

Defendants.

**DEFENDANTS ONE EQUITY PARTNERS LLC,
ONE EQUITY PARTNERS(EUROPE) GmbH, AND
CONSTANTIA FLEXIBLES GmbH’s OPPOSITION TO
PLAINTIFFS’ MOTION FOR SCHEDULING CONFERENCE**

Defendants Constantia Flexibles GmbH (“Constantia”), One Equity Partners, LLC (“OEP LLC”) and One Equity Partners (Europe) GmbH (“OEP Europe”) (collectively, “Defendants”) oppose Plaintiffs’ Motion for Scheduling Conference. The Court should deny Plaintiffs’ motion because this case is not procedurally ready for the parties to plan discovery or for the Court to enter a Scheduling Order.

Defendants made limited appearances in this case for the limited purpose of moving to dismiss for lack of personal jurisdiction and failure to state a claim. Their appearance, both in connection with the motions to dismiss and their opposition to the motion to amend, was without prejudice to their objection to the Court’s exercise of jurisdiction. *See*

Fisher v. Sw. Bell Tel. Co., No. 07-CV-04330CVE-SAJ, 2008 WL 2165957, at *4 (N.D. Okla. May 20, 2008) (“Lack of personal jurisdiction is not waived if raised in a motion under Rule 12.”). Pending before the Court are Defendants’ motions to dismiss for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted (Doc. 53) and Plaintiffs’ motion to amend their complaint for the second time (Doc. 70). Until the pending motions are decided, it is premature to enter a scheduling order.

Before the Court can hold a scheduling conference under FED. R. CIV. P. 16(b), the parties must meet and confer under FED. R. CIV. P. 26(f) to formulate a plan for discovery. Before either party can discuss the types of discovery necessary, the parties must know which, if any, claims will be litigated. If the Court grants Defendants’ motion to dismiss, it will dispose of this lawsuit and require nothing further of the parties. Defendants have not answered the First Amended Complaint or asserted their defenses because the procedural and substantive viability of Plaintiffs’ claims is still at issue. Until the parties’ pending motions have been decided, it is premature for Plaintiffs to force the parties to confer or plan any anticipated discovery.

Defendants respectfully request that the Court deny Plaintiffs’ motion for a scheduling order.

Dated: 7 October 2014

s/ John D. Russell

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CERTIFICATE OF SERVICE

I hereby certify that on 7 October 2014, I electronically transmitted DEFENDANTS ONE EQUITY PARTNERS LLC, ONE EQUITY PARTNERS (EUROPE) GMBH, AND CONSTANTIA FLEXIBLES GMBH'S OPPOSITION TO PLAINTIFFS' MOTION FOR SCHEDULING CONFERENCE to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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